

REPORT TO THE TWENTY-FOURTH LEGISLATURE
2007 REGULAR SESSION

THE TASK FORCE ON BEACH AND WATER SAFETY



PREPARED BY THE
DEPARTMENT OF LAND AND NATURAL RESOURCES
IN CONJUNCTION WITH THE
TASK FORCE ON BEACH AND WATER SAFETY

IN RESPONSE TO
ACT 190, SESSION LAWS OF HAWAII 1996
AS AMENDED BY
ACT 101, SESSION LAWS OF HAWAII 1999
AS AMENDED BY
ACT 170, SESSION LAWS OF HAWAII 2002

NOVEMBER 2006

THE TASK ON BEACH AND WATER SAFETY

This report has been prepared for submission to the Twenty-Fourth Legislature, 2007 Regular Session, pursuant to Act 190, Session Laws of Hawai'i (SLH) 1996, as amended by Act 101, SLH 1999, as amended by Act 170, SLH 2002, mandating annual reporting by the Task Force on Beach and Water Safety.

Act 190, SLH 1996, established a process for the State and Counties to provide both meaningful and legally adequate warnings to the general public of extremely dangerous natural conditions in ocean areas adjacent to their respective public beach parks. The Act recognized a duty to warn specifically of dangerous shorebreak or strong current in the ocean fronting a beach park, if either condition exists, is extremely dangerous, is typical for that beach park, and poses a risk of serious injury or death.

Act 190, SLH 1996, clarified that the State and Counties have no duty to warn of dangerous natural conditions at beaches, beach/coastal accesses or areas that are not public beach parks.

Act 190, SLH 1996, provided for a process, including record keeping, to replace vandalized, removed or illegible warning signs.

Act 190, SLH 1996, called for the formation of a Task Force on Beach and Water Safety to advise the Chairperson of the Board of Land and Natural Resources prior to the Chairperson making a decision on the design and placement of warning signs erected pursuant to this Act.

The Task Force on Beach and Water Safety was convened after officer participants were solicited via their respective County Mayors and formally appointed by Governor Benjamin Cayetano pursuant to Act 190, SLH 1996. Other Task Force members were seated by their government position as provided in the Act and had their appointment continued in August 2002.

Act 101, SLH 1999, amended Act 190, SLH 1996, by extending its mandate through June 30, 2003. Act 170, SLH 2002, subsequently amended Act 101, SLH 1999, by extending its mandate through June 30, 2007.

The Task Force members are:

Peter T. Young, (Task Force Chairperson), Chairperson, Board of Land and Natural Resources

Ted Liu, Director, Department of Business, Economic Development, and Tourism

Chris Measures, Chair, Department of Oceanography, University of Hawai'i

Marian Feenstra, Chief, Aquatics Division, Department of Parks and Recreation, County of Maui

David Kalani Vierra, Ocean Safety Bureau, Kaua‘i Fire Department, County of Kaua‘i

Ralph Goto, Director, Ocean Safety & Lifeguard Services Division, Department of Emergency Services, City and County of Honolulu

Larry Davis, Program Administrator, Aquatics Division, Department of Parks and Recreation, County of Hawai‘i

Designees are:

Daniel S. Quinn (for Peter T. Young), Administrator, Division of State Parks, Department of Land and Natural Resources

Richard Grigg (for Chris Measures) Marine Biologist, Department of Oceanography, University of Hawai‘i

Since late 1996, as reported previously, the Task Force has accomplished the following:

- Designed signs to warn of “strong current” and “dangerous shorebreak”
- Prepared guidelines for permanent sign placement
- Placed “strong current” and “dangerous shorebreak” signs, where warranted, at State and County beach parks
- Designed signs to warn of other extremely dangerous natural conditions in the ocean adjacent to a public beach park:

high surf	waves break on ledge
sudden drop-off	slippery rocks
man-o-war	jellyfish
sharp coral	shark sighted
rip currents	
- Prepared guidelines for temporary sign placement

The Task Force met on April 13, 2006, June 16, 2006, July 27, 2006, and September 28, 2006. The meeting agenda and minutes of April 13, June 16 and July 27 meetings are attached as Appendix 1. The minutes of the September 28, 2006 meeting will be reviewed for adoption at the next Task Force meeting.

SUMMARY OF TASK FORCE ACTIVITIES:

The purpose of the Task Force is primarily to advise the Chairperson of the Board of Land and Natural Resources prior to the Chairperson making a decision on the design and placement of warning signs erected pursuant to Act 190, SLH 1996. The Task Force is also

mandated to prepare an annual report on its recommendations. For this reporting period, the signs requiring Task Force recommendation to the Chairperson are sign relocations requested by the County of Hawaii at Kahaluu and Laaloa Beach Parks, and new sign locations at Kahaluu and Lehia Beach Parks.

The County of Hawaii requested approval for warning sign relocation at Kahaluu and Laaloa Beach Parks and a new sign location at Kahaluu Beach Park. Kahaluu Beach Park previously had three sign locations. The signs were moved from the location near the road, which was within the trees and other signage, to a new, more visible location near the restroom.

Additionally, the County installed a new lifeguard tower at Kahaluu and requested approval to install strong current and hazardous shorebreak signs on the lifeguard tower as a new sign location, #4.

At Laaloa Beach Park, the County requested relocation of Sign #1 from near the intersection with Alii Drive, to a location near the restroom. The location near the restrooms is more visible than the location near the road, as, when driving into the park, people are focusing on the road or beach, and may not notice the signs near the road.

County of Hawaii opened Lehia Beach Park and requested approval for an additional warning sign location.

Signage was provided initially at the park entrance (location 1). The request by the County was to approve a second signage location (location 2) where the public will enter the water at the south end of the Beach Park.

Hawaii County's requests were approved by the Task Force, and subsequently sent to the Chairperson for consideration. All requests were approved.

Another focus of effort for the Task Force is the development of comprehensive plans. Act 190, SLH 1996, provides for development of comprehensive plans to further enhance ocean safety at beach parks.

The Task Force continues to review and discuss comprehensive plans, specifically the Comprehensive Plan for Sandy Beach on O'ahu. The Plan was prepared by the Ocean Safety and Lifeguard Services Division, Department of Emergency Services, City and County of Honolulu. The intent is to use this Plan, which continues to be refined, as a template for other comprehensive plans.

Act 190, SLH 1996, provides meaningful warning to the general public of extremely dangerous natural conditions in ocean area adjacent to public parks. Act 190, SLH 1996, also establishes legally adequate and defensible standards for those warnings. Stated another way, once the warning signs are approved and installed, the public has been adequately warned of those hazards, and the State and Counties are protected from lawsuits which allege a failure of duty to warn. While the standardization of ocean hazard signs at public beach parks statewide affords greater liability protection, it is even more valuable from the resident/visitor beachgoer

perspective, as they are meaningful, consistent, more and more recognizable, and, therefore, results in promoting greater understanding, respect, and enjoyment of the otherwise inviting ocean.

It should be noted that signs developed through the Act 190, SLH 1996, process have been used by other agencies throughout the country and are being considered for adoption by at least one international organization. In addition, the format of the Act 190, SLH 1996, signs is being used by a joint State/County working group as a template for signs to warn people of natural hazards on land.

Act 170, SLH 2002, provides liability immunity for counties and county lifeguards while providing rescue, resuscitative or other lifeguard services. The State does not have lifeguards and contracts with the Counties for lifeguard services at State Parks. Liability concerns have prevented some counties from participating. Act 170, SLH 2002, clears up these concerns and will allow the State to contract with all counties for lifeguard services State Park beaches when funding becomes available. In addition, Act 170, SLH 2002, has saved the State approximately \$1 million in liability insurance costs.

The County of Hawaii provides lifeguards at Hapuna Beach State Recreation Area through a contract with the State. Prior to the enactment of Act 170, SLH 2002, the County of Hawaii secured a liability insurance policy to protect the County and State from lawsuits should a problem arise. This policy was paid by the State through the lifeguard contract. Over the years, the cost of this policy was increasing at a rapid rate and it was becoming very difficult to find an insurance company willing to provide the policy. The last policy in place, originating in Fiscal Year 2002-2003, cost the State \$247,091.91.

Following the enactment of Act 170, SLH 2002, there was no longer a need for such a policy, and none was secured. Therefore, the State has realized a cumulative savings of approximately \$1 million over the course of the four contract periods since Act 170, SLH 2002, became effective.

APPENDIX 1

AGENDA

MEETING OF THE TASK FORCE ON BEACH AND WATER SAFETY

**April 13, at 9:00 A.M.
1151 Punchbowl St., Rm 131**

9:00 A.M. Welcome, Introduction

Approval of Previous Meeting Minutes

New Business

- 1. Requests for approval**
- 2. Legislative update**
- 3. Sunset Provision – Act 190/Act 170**

Old Business

12:00 Noon Adjourn

APPENDIX 1

MINUTES MEETING OF THE TASK FORCE ON BEACH AND WATER SAFETY

April 13, 2006
1151 Punchbowl Street, Room 131

The meeting was called to order at 9:00 A.M.

APPROVAL OF PREVIOUS MEETING MINUTES

The Task Force approved the minutes of the February 14, 2005 meeting (which had been deferred at the last meeting pending reformatting), and also approved the minutes of the July 1, 2005 meeting.

NEW BUSINESS

REQUESTS FOR APPROVAL

Hawaii County submitted a request to relocate sign #2 from its current location near the road to a more visible location near the restroom, and create a new sign location (#4) on a new lifeguard tower at Kahaluu Beach park.

Hawaii County also submitted a request to relocate sign #1 at Laaloa Beach Park from its current location near the road to a more visible location near the restroom.

Both requests were approved by the Task Force.

LEGISLATIVE UPDATE/ ACT 190 ACT 170

All Act 190/Act 170 bills have died in the legislature. With no action during the next session, Acts 190 and 170 will sunset on June 30, 2007.

The Task Force discussed the need to raise awareness of the issue among lawmakers, government agencies and the general public. The County and State representatives will seek increased participation by their respective legal offices to work on a unified effort to keep Act 190 and Act 170 in effect.

Task Force discussed the need to research statistics which will help the lawmakers understand the benefits of the law.

Examples discussed are:

- A savings of \$200,000 annually for liability insurance for Hapuna Beach which was deemed not necessary since Act 170 was enacted.
- Kauai County has installed towers, and provided lifeguards at Kealia and Kekaha which would not have been done without Act 170.

OLD BUSINESS

The Task Force discussed sign recognition. Ralph Goto and Dr. Grigg will discuss the next steps for evaluation of sign recognition.

The next meeting was scheduled for June 16, 2006 at the Kalanimoku Building.

The meeting was adjourned at 10:30.

ATTENDANCE

Meeting of the Task Force on Beach and Water Safety
April 13, 2006

Ralph Goto	City and County of Honolulu
Daniel Quinn	Division of State Parks, DLNR
Kalani Vierra	County of Kauai
Dr. Richard Grigg	University of Hawaii
Archie Kalepa	Maui County

MINUTES
MEETING OF THE TASK FORCE ON BEACH AND WATER SAFETY

JUNE 16, 2006

1151 PUNCHBOWL STREET, ROOM 131
HONOLULU, HAWAII

ATTENDEES: Lani Nakazawa, Kauai Corporation Counsel
Kalani Vierra, Ocean Safety Supervisor, Kauai Fire Dept.
Larry Davis, Aquatics Division Administrator, Hawaii County
Ricky Grigg, UH Professor
Ken Robbins, Esq.
Leighton Hara, Esq.
Caron Inagaki, Deputy AG
Randy Slaton, Deputy AG assigned to the Task Force
Kevin Mulligan, HGEA Rep.
Celeste Nip, Fire Union Representative
Dan Quinn, DLNR
Dawn Spurlin, Deputy Corporation
Scott Dodd, Deputy Corporation Counsel
Ralph Goto, Ocean Safety, City and County of Honolulu
Robert Western, Kauai Fire Chief

The meeting was called to order at 9:00. The meeting was primarily informational and to strategize for the upcoming legislative session. Ralph Goto and Dan Quinn summarized what happened at this past legislative session with the proposed bills repealing Acts 190 and 170 2007 sunset dates. Goto suggested that in lieu of providing the legislature with numbers to indicate that the Acts are working, Goto recommending submitting information about the impact of the Acts.

Ken Robbins stated that the underlying purpose of Act 190 was to protect visitors who were unfamiliar with Hawaii waters. Act 190 attempts to balance government's duty to warn beach goers and the risk to government entities to allow use of the beaches. Statistics may not be conclusive because signs are not the best method to control activity. Robbins suggested that pro-active efforts are more productive to affect people's behavior. Because many injuries occur within 24 to 36 hours of landing, visitors do not have the opportunity to view the safety video in the hotel. Robbins stated it would be more productive if the airlines showed the safety video on board before the passengers landed.

Robbins provided a summary of the Lansdell v. County of Kauai, 2006 WL 802373 (March 2006) which affirmed Act 190 immunity for beach and coastal accesses. The case overruled the Atahan case and found that the Recreational Use statute is not applicable to government. Defense had argued that the hazard was open and obvious which was upheld at the trial level. However, on appeal, the Supreme Court did not address this issue. Plaintiff argued that the Queens beach, which consists of a parking lot and a trail, was a de facto beach park. The Supreme Court disagreed.

Act 170 was enabling legislation to provide the counties, the State, and individual lifeguards with immunity when providing lifeguards at State and County beaches. This will allow provision of lifeguards at Makena Beach (Maui) and Ke'e Beach (Kauai). However, due to lack of funding, the counties have not provided lifeguards.

Ricky Grigg offered various suggestions on the types of information which could be included in the testimony or information to be provided to the legislature to support repeal of the sunset provisions.

The general consensus was to support repeal of the Act 190 sunset and extension of the Act 170 sunset date. The attendees would solicit support from their respective jurisdictions, and will start working on strategy.

Dr. Grigg proposed that the Task Force request that Dan Galanis update his drowning survey.

The Task Force discussed the need for funding to complete risk/hazard assessments and for the expenses of the Task Force.

The Task Force took a break at 10:30 and resumed at 10:45.

The minutes of the April 13, 2006 meeting were approved.

Kauai submitted sign replacement reports. Kauai reported that Kealia Beach Park is being redesigned, and that they will be submitting new sign locations after the construction is completed

Hawaii County has recently opened a Beach park – Lehia Beach Park in Hilo, and requested approval of a new sign location.

Act 190 Strong Current and Dangerous Shorebreak signage is already posted at the park entrance (location 1). The Task Force approved a second location

(location 2) near where the public will enter the water at the south end of the beach park.

OLD BUSINESS

Dr. Grigg recommended the following:

Need to evaluate effectiveness of signage, and that a study should be contracted for

that propose

- Task Force should develop criteria for such a study
- Task Force should get funds

NEW BUSINESS

R. Grigg will contact D. Galanis to extend, update his drowning survey

The Ocean Safety Conference is tentatively scheduled for the second Thursday and Friday in September in Hilo

Next Task Force meeting is scheduled for July 27, Thursday

The meeting adjourned at 11:30

AGENDA

MEETING OF THE TASK FORCE ON BEACH AND WATER SAFETY

9:00 A.M., July 27, 2006
Kauai County Civil Defense Meeting Room
Lihue, Kauai

- 9:00 A.M. Welcome, Introduction
- Approval of Previous Meeting Minutes
- New Business
1. Requests for approval
2. Sunset Provision – Act 190/Act 170
- Old Business
- Site Inspection: Kealia Beach Park
- 1:00 P.M. Adjourn

MINUTES

MEETING OF THE TASK FORCE ON BEACH AND WATER SAFETY

9:00 A.M., July 27, 2006
Lihue, Kauai

Attendance

Daniel Quinn	DLNR/State Parks
Ralph Goto	City & County of Honolulu/Ocean Safety
John Kapsky	Hawaii County/Ocean Safety
Jim Tagupa	County Attorney's Office
Randy Slaton	Deputy Attorney General
Marian Feenstra	Maui County/Parks and Recreation
Kalani Vierra	Kauai County/Ocean Safety
Monty Downs	Kauai Task Force
Robert Westerman	Kauai Fire Department

The meeting was called to order at 9:00 A.M. and attendees introduced themselves.

The Minutes of the June 16, 2006 meeting were discussed, and approval was deferred pending revisions.

There were no requests for approval for new signs or sign locations.

Ralph Goto, with the City and County of Honolulu, raised an issue as to a previous recommendation the Task Force had made in its July 1, 2005 meeting. During the July 1, 2005 meeting, the Task Force had reviewed and then approved the posting and placement of strong current and waves on ledge warning signs at the Koko Kai Beach Right-of-Way.

When the Task Force had made its recommendation, the Task Force was under the impression that the Koko Kai Beach Right-of-Way was a beach park. Mr. Goto clarified that the Koko Kai Beach Right-of-Way is not a beach park or shoreline park, thus there would be no need for the Task Force to approve the placement of the signs.

The Task Force determined that even though there was no need to approve the placement of the warning signs at the Koko Kai Beach Right-of-Way, there was no need to rescind its action of the approval of the signs.

The Task Force discussed the next steps to work with the Legislature to support repeal of the sunset provisions of Act 190 and Act 170.

The Report to the Legislature is very critical, but there are problems with collection of meaningful statistics. There are too many variables in data collection. It may be better to look at the overall program.

Discussion of presentation/education effort (City and County of Honolulu)

- Video now being shown on Hawaiian Air
 - Will be re-working. Needs bullets from all Counties to develop a statewide version
 - Working with UH - Developing a website with real time surf information, including a hazardous rating

Discussion for completing the beach hazard assessment
(Dr. Short)

Information must be accurate/timely (for website)
to be effective

Discussion of additional sign posting

Agencies will submit requests for approval for additional signs

Next meeting - Tentatively scheduled for August 30 - Honolulu